payphone service.[40] The Commission can meet its obligations under Section 276(b)(1)(C) of the 1996 Act only by prescribing "a comprehensive set of nonstructural safeguards to protect against cross-subsidization and discrimination."[41]

The Commission's current regulation of BOC provision of enhanced services through Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements is designed to ensure that competing enhanced service providers can obtain unbundled, nondiscriminatory access to BOC network features and functions. Competitors of BOCs in the payphone service market require the same unbundled, nondiscriminatory access to BOC payphone network features. If such access is denied, BOCs would be able to impede competition by subsidizing payphone service from monopoly telephone exchange service operations and discriminating in favor of their own payphone service.

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[40] Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III) Phase I, 104 F.C.C.2d 958 (1986) ("Phase I Order"), recon., 2 FCC Rcd 3035 (1987), further recon., 3 FCC Rcd 1135 (1988), second further recon., 4 FCC Rcd 5927 (1989). The safeguards adopted by the Commission include: nondiscriminatory access to network features and functions; restrictions on the use of Customer Proprietary Network Information ("CPNI"); network information disclosure rules; nondiscrimination in the provision, installation, and maintenance of services as well as nondiscrimination reporting requirements; and cost accounting safeguards.

[41] Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, Report and Order, 6 FCC Rcd 7571, 7576 (1991)(in an analogous situation -- BOC provision of enhanced services -- the Commission noted that "it is critical to the development of full and fair competition to establish ... effective safeguards against anticompetitive conduct" by monopoly carriers).

AT&T also supports the Commission's tentative conclusion (¶ 62) that the BOCs' CEI plans should explain how they will unbundle basic payphone service network elements in order to ensure that all of the BOC network features and functions needed to provide payphone services are made available to competing payphone providers. This is consistent with the BOCs' ONA obligations to enhanced service providers and would fulfill the same pro-competitive purpose for competitive payphone providers. As noted in Part II above, ILECs should be required to unbundle central office coin services[42] and central office coin transmission services[43] and make them available to PSPs under nondiscriminatory tariffs.

Finally, AT&T supports application of the network disclosure requirements proposed in the Local Competition Proceeding[44] to all ILECs' provision of basic payphone services [45] Those proposed rules augment the existing Computer III requirements to ensure that all ILECs provide "reasonable public notice" of technical

42 Central office coin services include coin recognition and answer detection.

43 Central office coin transmission services include access to the intelligence required to perform answer supervision, collect refund, far end disconnect and call timing.

44 See Local Competition Proceeding, NPRM, at ¶¶ 189-194.

45 In its comments in the Local Competition Proceeding AT&T suggested (pp. 24-25) two changes to the Commission's proposal, i.e., that the Commission should (1) require ILECs to file with the Commission a statement noting that a technical change has been announced and identifying where the requisite detailed disclosure has been made; and (2) establish a one-year minimum notice period for changes to network elements or operations support system technology.

changes in their networks that would "affect the interoperability" of their facilities or networks.[46] Payphone service providers require the same type of information in order to interconnect with a BOC's (and all other ILECs') payphone services. Therefore, the Commission should adopt here the network information disclosure requirements proposed by the Commission, with the changes suggested by AT&T in the Local Competition Proceeding.[47]

IV. THE PUBLIC'S INTEREST IN INCREASED COMPETITION WOULD BE HARMED IF ILECS IMPROPERLY COERCE LOCATION OWNERS INTO SELECTING A PRESUBSCRIBED INTERLATA CARRIER FOR CALLS FROM ILEC PAYPHONES.

Section 276(b)(1)(D) provides that the Commission should adopt rules giving BOCs "the same right that independent payphone providers have to negotiate with the location provider" on the latter's selection of an interLATA carrier for calls from payphones at its premises "unless the Commission determines in [this] rulemaking . . that it is not in the public interest." Accordingly, the Notice (¶ 71) seeks comment on the extent to which giving BOCs the right to negotiate with payphone owners would not be in the public interest. In particular, it asks (id.)

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[46] See Section 251(c)(5).

[47] AT&T also agrees with the Commission's tentative conclusion (¶ 63) that the rules it adopts in the current CPNI proceeding should apply to a BOC's provision of payphone service. See Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, released May 17, 1996. There is no basis to treat CPNI obtained in the provision of payphone service differently than CPNI obtained through other services offered by a BOC.

whether granting such rights would benefit competition and increase the availability of services and overall efficiency, or (¶ 72), in contrast, permit BOCs to act anticompetitively. The BOCs' and GTE's current and potential future position in the local, intraLATA and interLATA businesses present significant risks that these incumbents will use anti-competitive tactics to ensure preferential treatment for themselves or their affiliates if the Commission grants them this right of negotiation too soon.

Permitting the BOCs to negotiate with location owners in order to persuade them to pick a preferred carrier for the BOCs' payphones also enables the BOCs effectively to enter the interLATA market through acquiring an economic interest in (and thus the incentive to favor) the IXCs they designate to serve those payphones. The Commission cannot allow this result before the BOCs are permitted to enter the in-region interLATA market pursuant to Sections 271 and 272 of the Act.

Moreover, even after a BOC has satisfied the Section 271 criteria, the Commission should not permit it to negotiate with payphone owners within its own region until the Commission has evaluated how the BOC's control of local exchange facilities and extensive payphone penetration affects its ability and incentives to behave anticompetitively. As the Commission recognizes (¶ 72), the BOCs' dominant role in the provision of payphones could give them enormous leverage in influencing or foreclosing location owners' ability to select presubscribed carriers. The other ILECs possess a similar role in their serving territories. In fact, the ILECs, together with the BOCs, currently own and operate 80 percent of the payphones in the nation. This is the reason that existing Commission rules sharply restrict ILEC participation in the payphone presubscription process. There is no basis here for the Commission to abandon its long-standing policy of requiring all ILECs to exercise neutrality in the carrier selection process.[48]

To the contrary, allowing BOCs (or any ILECs) an unfettered role in the payphone presubscription process would give rise to myriad opportunities for anticompetitive behavior. For example, upon information and belief, Citizens Telecom advised all location owners in its serving area in April 1996 that Citizens' payphones would be switched to an IXC designated by Citizens, and that no commissions would be paid on calls handled by the new carrier. Citizens gave location owners the option of retaining their current IXC only if they paid Citizens a fee for the continued placement of the phones. If the location owner rejected either option, Citizens informed them that it would remove the phones.

BOCs and other ILECs would also have strong incentives to behave anti-competitively in negotiating commission arrangements with IXCs for both interLATA and intraLATA calls. Even prior to the advent of in-region interLATA competition, BOCs can aggregate their hundreds of thousands of payphones to extract extraordinary commissions from IXCs for the selection of a PIC. Indeed, BellSouth, U S WEST and

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[48] Investigation of Access and Divestiture Related Tariffs, 101 F.C.C.2d 911 (1985). Because the Commission has applied this neutrality standard to all ILECs, it should continue the neutrality requirements and preclude all ILECs from selecting the IXCs for their own payphones.

GTE have already contacted AT&T (and other IXCs) with the prospect of entering into a contract for the delivery of 0+ interLATA traffic from their companies' entire base of payphones. This will, of course, add to the costs that consumers must bear, and it will also reduce the number of carriers that will be available from payphones on a 0+ basis. After in-region competition is permitted, the BOCs can be expected to shift their tactics and simply select themselves as the PIC for all calls from all of their payphones. This unique combination of BOC advantages would render most location providers unwilling and/or unable to consider an offer by another payphone service provider, and would further reduce competition for 0+ interLATA and intraLATA calling from payphones.

Overall, the Commission should establish a process to determine if ILECs should have the right to negotiate with location owners regarding selection of an interLATA carrier. For a BOC, the process begins with the BOC having satisfied the Section 271 checklist requirements. Then, the Commission should assess the competitive circumstances which exist in the payphone business in the relevant area to determine whether allowing the BOC to negotiate would be in the public interest. If the Commission determines that allowing the BOC to negotiate is in the public interest, the Commission should then consider adopting rules to minimize any remaining risk of coercion by these carriers.[49] The Commission can then apply these rules to all ILECs in their serving territory.

The Notice (¶ 73) also correctly concludes that Section 276(b)(3) "grandfathers" all contracts in existence between location owners, PSPs, or carriers as of the date the 1996 Act was enacted.[50] The Commission should also affirm that interference with any existing contract at any time is an unjust and unreasonable practice under Section 201(b).

V. THE COMMISSION MUST PREEMPT STATE RULES THAT DO NOT PERMIT COMPETITION FOR INTRALATA TRAFFIC FROM PAYPHONES.

In recognition of its obligation under Section 276(b)(1)(E) of the Act, the Commission has tentatively concluded (¶ 75) that "all PSPs, whether LECs or competitive payphone providers, should be given the right to negotiate with location providers concerning the intraLATA carrier." This conclusion presumes that PSPs (and location providers) have the opportunity to avail themselves of competitive services provided by a carrier other than the incumbent LEC.

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49 At a minimum, the Commission should make it explicit that ILEC conduct which is coercive of location owners (such as threatening to charge for, or remove, payphones) or discriminates against or among IXCs will violate Sections 201 and 202 of the Act.

50 The definition of "contract" for these purposes should include all agreements or authorizations which commit a location owner to select a particular IXC for phones at its premises. This would include lawfully executed letters of authorization, as well as all other lawful agreements.

In support of this tentative conclusion, the Commission references regulatory constraints in the state jurisdictions which today prevent carriers (other than the ILEC) from handling 0+ and 0- intraLATA calling from payphones. Specifically, the Commission notes that some states require competitive payphone providers to route the intraLATA 0+ and 0- intraLATA calls to the incumbent LEC (id.). AT&T believes that the elimination of these state restrictions is fundamental to the introduction of meaningful competition in the intraLATA business. Excluding the vast majority of payphones in the marketplace from the benefits of competition will guarantee the ILECs' continued monopoly provision of intraLATA services. The Commission must therefore exercise its preemption authority as provided for in Section 276(b)(1) of the Act, and preempt any state action which is inconsistent with the Commission's regulation.[51]

[51] Specifically, AT&T requests that the Commission (1) require the inclusion of ILEC payphones in the presubscription process in the 15 states with toll dialing parity orders issued prior to December 15, 1995, including the 9 single LATA states. Because payphone competition is separately mandated under the Act, notwithstanding the general dialing parity provisions in Section 271(e)(2), the Commission should also consider requiring immediate intraLATA presubscription for all BOC payphones which are located in territories where intraLATA presubscription is technically available. BOC payphones represent a majority of all payphones, and effective competition for the provision of intraLATA services from payphones cannot occur until public phone equal access is implemented. Moreover, without intraLATA presubscription, the BOCs have the unique advantage of bundling intra- and interLATA service in conjunction with their monopoly provisioning of payphone service.

To the extent it is technically feasible, AT&T supports the Commission's tentative conclusion (¶ 84) that the benefits of dialing parity should extend to all payphone location providers. Lack of dialing parity, i.e., the need to dial additional digits to reach customers of different local exchange carriers serving a local area, could significantly affect competition for the placement of payphones. It would also cause substantial confusion for callers. Similarly, the Commission should also adopt intraLATA unblocking requirements that forbid payphone providers from blocking access to intraLATA carriers other than the primary intraLATA carrier.[52] The reasons supporting this requirement are identical to the pro-competitive rationales which underlie the Commission's interLATA unblocking rules.

CONCLUSION

With this NPRM, the Commission will redesign competitive payphone service. AT&T supports most of the proposals the Commission has made to accomplish this objective, but urges the Commission to carefully evaluate the extent to which incumbent local exchange carriers should be permitted to negotiate with location providers regarding selection of an interLATA carrier. Granting this right prematurely

[52] See Notice, ¶ 84.

could jeopardize the important steps the Commission is proposing in the NPRM and competition in the provision of payphone services in accordance with Section 276 of the 1996 Act.

Respectfully submitted,

AT&T CORP.

By ____________________

Mark C. Rosenblum
Peter H. Jacoby
Richard H. Rubin

Its Attorneys

Room 3244J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-3539

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